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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/537,842	06/06/2005	Vittorio Orlandi	207,020	8600

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02/22/2008

EXAMINER

JOHNSON, JENNA LEIGH

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

02/22/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/537,842

**Applicant(s)**

ORLANDI, VITTORIO

**Examiner**

Jenna-Leigh Johnson

**Art Unit**

1794

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 November 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 3-12 and 16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3-12 and 16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

1. The Amendment submitted on November 13, 2007, has been entered. Claims 2 and 13 - 15 have been cancelled. Claim 16 has been added. Therefore, the pending claims are 1, 3 - 12, and 16.
2. The cancellation of claims 13 - 15 renders moot the rejection of those claims set forth in the previous Office Action.
3. The translation of the foreign priority application is sufficient to establish priority back to the filing date of the foreign application, December 6, 2002. Therefore, the 35 USC 102 and 35 USC 103 rejections based on Bakken et al. (6,875,315) are withdrawn since Bakken et al. was not filed prior to December 6, 2002.

### ***Claim Rejections - 35 USC § 103***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
5. Claims 1, 3 - 12, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rugmaker's Homestead Website: A Brief General History of Rag Rugs; Rugmaker's Homestead Website: #17: Loom Woven rag Rugs; and Rugmaker's Homestead Website: #19 Frame Woven, Twisted Warp and Twisted Weft Rugs.

According to the General History of Rag Rugs, rag rugs were produced by various techniques including loom woven from material mostly produced by recycling worn clothing or other textile (General History of Rag Rugs, paragraphs 2 and 3). The fabrics were made as early as the late 1800's and early 1900's (General History of Rag Rugs, paragraphs 2 and 3). Further, the history discusses that the materials for rag rugs would have been collected from waste materials from local textile mills (Letters About Rag Rug History Section, 4<sup>th</sup> paragraph). Further, the history teaches that producers of rag rugs would use whatever scrap fabric material was readily available as the fabric for the rag rugs (Letters

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About Rag Rug History Section, 12<sup>th</sup> paragraph). Additionally, rugs were made from fabric strips which were woven together (Frame Woven, Twisted Warp and Twisted Weft Rugs, paragraphs 1 and 2). A wide variety of fabrics would be used as the fabric strips including wools and denims (Frame Woven, Twisted Warp and Twisted Weft Rugs, paragraphs 1 and 2). Further, the section describing loom woven rag rugs teaches that fabric strips with sizes such as 0.5 to 0.75 inches or 1.5 inches could be used to make loom woven rugs (Loom Woven Rag Rugs, 1<sup>st</sup> paragraph). Materials can include woolen, denim, and corduroy fabric or lining fabrics made from rayon, nylon, or silk (Loom Woven Rag Rugs, 1<sup>st</sup> paragraph). And before the 1930's it was common to use household rags to make the rag rugs from (Loom Woven Rag Rugs, 3<sup>rd</sup> paragraph). Thus, it is known to make woven rag rug fabrics by weaving together fabric strips of different sizes as the warp and weft yarns in the woven fabric. Further, it is known to use scrap materials either from textile mills or household rags as the basis for these scrap fabrics. And these fabrics can be made from various materials including wools, cottons, nylon, denims, corduroys, linings, and other fabrics.

However, the Rugmaker's Homestead Website fails to teach that nonwoven fabrics made by hydroentangling, spunbonding, or thermal bonding can be used as the fabric strips. However, it would have been obvious to one having ordinary skill in the art that any known fabric strip, rag materials, or waste materials from textile mills or household fabrics could be used as the warp or weft yarns in the woven rag rug fabric since rag rugs are produced from scrap materials which can be found in rag fabrics or as waste from textile mills. Further, it would have been obvious to one having ordinary skill in the art to choose nonwoven spunbonded, hydroentangled, or thermal bonded fabric scraps, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. Thus, claims 1, 3, 6, 9, 11, and 12 are rejected.

Further, the Rugmaker's Homestead teaches that the woven fabric can include a second material such as string for either the warp or weft yarn to interweave with the rag strips to create the woven fabric (Frame Woven, Twisted Warp and Twisted Weft Rugs, paragraphs 3 and 4). Thus, claims 7 and 8 are rejected.

With regards to claim 16, the applicant is claiming how the woven fabric is used. The different uses do not further limit the structure of the woven fabric. It has been held that a recitation with respect to the manner in which a claimed product is intended to be employed does not differentiate the claimed product from a prior art product satisfying the claimed structural limitation. *Ex parte Masham*, 2 USPQ2d 1647 (1987). Thus, claim 16 is rejected with claim 1.

While the Rugmaker's Homestead suggests that the fabric strips can have widths of 0.5 to 0.75 inches or 1.5 inches, the Rugmaker's Homestead fails to teach a strip which is 4 to 7 cm wide. However, it would have been an obvious matter of design choice to use different width strips in the woven fabric, since such a modification would have involved a mere change in the shape of a component. A change of shape is generally recognized as being within the ordinary level of skill in the art. *In re Dailey*, 357 F.2d 669, 149 USPQ 1966. Thus, claim 10 is rejected.

Additionally, the Rugmaker's Homestead fails to teach the basis weight of the nonwoven fabric strips. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to choose the claimed basis weight, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 220 F.2d 454, 105 USPQ 233 (CCPA 1955). One of ordinary skill in the art would optimize the weight of the fabric, to provide good coverage, appearance, and feel, while minimizing the cost of the fabric by limiting the amount of material used in the fabric. Thus, claims 4 and 5 are rejected. The claims to the woven fabric made from nonwoven fabric strips would have been obvious over known rag rugs fabrics made from rags and scrap fabric strips because the

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substitution of one known and more modern elements for another, older material would have yielded predictable results to one of ordinary skill in the art at the time of the invention.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna-Leigh Johnson whose telephone number is (571) 272-1472. The examiner can normally be reached on Monday - Friday (8:00 - 5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on (571) 272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

jlj  
February 18, 2008

/Jenna-Leigh Johnson/  
Primary Examiner  
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